S.B. Civil Misc. Appeal No.1186/2005

National Insurance Company Ltd.

vs.

Mangali and others.

Date : 8.9.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Manoj Bhandari, for the appellant.

Mr. LD Khatri, for the respondents.

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Heard learned counsel for the parties.

The appellant is aggrieved against the award dated 13.4.1999 by which the learned Motor Accident Claims Tribunal, Pali awarded compensation of Rs.6,96,320/- to the claimants on account of the loss which they suffered due to the death of one Ramkaran in the accident which occurred on 3.1.1992.

According to learned counsel for the appellant, since it was a case of collusion of two vehicles, therefore, it was a case of contributory negligence and that the claimants did not implead the owner and driver of the other vehicle, therefore, the Tribunal committed error in awarding compensation against the appellant's insured vehicle's owner.

I have considered the submissions of learned counsel for the appellant.

It is not in dispute that the appellant insurance company has right to raise the defences only which are available to it under Section 149 of the Motor Vehicles Act, 1988 (for short 'the Act'). Whether there was a contributory negligence or it was the sole negligence of the vehicle against which the award was passed is a question relating to the occurrence of the accident and the appellant has no right to challenge the finding of the Tribunal recorded on this issue particularly, when no permission was granted to the appellant under Section 170 of the Act by the Tribunal.

Learned counsel for the appellant also submitted that the victim was employed on the vehicle and, therefore, he could have submitted claim petition under the provisions of the Workmen Compensation Act and according to the learned counsel for the appellant, the claimants did not disclose whether they preferred any claim petition before the Workmen Compensation Commissioner or not ? I do not find any force in this submission of the learned counsel for the appellant and non-mention of this fact in the claim petition is of no consequence.

I do not find any merit in this appeal and accordingly, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya